IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 26 Of 2006

1. State of Uttaranchal through
   Secretary, Department of Animal Husbandry
   Secretariat, Dehradun
2. Deputy Secretary, Department of Animal Husbandry, Secretariat, Dehradun
3. Additional Director
   Department of Animal Husbandry
   Uttaranchal, Gopeshwar, District Chamoli
4. Deputy Director, Animal Husbandry,
   Pashulok, Rishikesh, District Haridwar

Vs

1. Satish Bijalwan S/o Sri P.N. Bijalwan
   R/o Leechi Baag, Chauna Bhatta Road
   Kaulagarh, Post I.P.C. District Dehradun

2. Govind Ballabh Pant University of
   Agriculture & Technology, Pant Nagar
   through its Vice Chancellor

... Respondent

Shri B.D. Kandpal, learned counsel for the State/appellants
Sri. Lalit Samant, learned counsel for respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this special appeal, the appellants have challenged the judgment and order dated 31.03.2006 passed by learned Single Judge of this Court in Writ Petition No. 195 (S/S) of 2006, Satish Bijalwan Vs. State of Uttaranchal & others, by which the learned Single Judge allowed the aforesaid writ petition quashing the impugned order dated 31.01.2006 and 02.03.2006 passed by appellants/respondents No. 1 and 2 and further a writ of mandamus was issued directing the respondents to grant admission to the respondent/petitioner for the training course of the post of Livestock Extension

Officer in view of the letter dated 19.12.2005 by which a seat of reserved category had been kept vacant.

2. Brief facts of the case are that the respondent/petitioner was selected for the training of Para-Veterinary Surgeon in the month of March 2000 under the World Bank Sponsored i.e. U.P. Diversified Agriculture Support Project and completed his training on the said post for four months. Thereafter, he was given extension for training upto November 2001 from July 2000. He also obtained 'Refresher-Training' in Veterinary at Pashulok, Rishikesh, District Dehradun. Thereafter, he was continued in the extended training programme of Para-Veterinary surgeon under the Government Veterinary hospitals/centers in District Dehradun till June 2004. He also completed successfully three years training of Para-Veterinary Surgeon and was getting a small consolidated remuneration from the State Government during the period of training and that the training of Paragraph Veterinary Surgeon was just like the training of Livestock Extension Officer of a Government Hospital. There were certain posts of the Live Stock Extension Officer lying vacant in the State of Uttaranchal. State of Uttaranchal requested the G.B. Pant University to issue the advertisement for the selection on the post of Live Stock Extension Officer which was published in the daily newspaper *'Amar Ujala'* on 12.04.2005. The qualification in the advertisement was prescribed as Intermediate or equivalent qualification with biology as one of the subjects from the Institution located in the State of Uttaranchal and the persons domiciled in the State of Uttaranchal were allowed to apply for the said

post. In the aforesaid advertisement, there was no reservation of the post in favour of handicapped person. But the respondent/petitioner applied for the said post under the category of handicapped person for getting the benefit of reservation. The respondent/ petitioner appeared in the entrance examination and the result of the written examination was declared in the month of July, 2005 and the counseling for admission was done in the month of September, 2005. The petitioner was not called for two years training course of the post of Live Stock Extension officer. Thereafter, the respondent/petitioner filed a writ petition No. 1838 (S/S) of 2005 before this Court which was disposed of by learned Single Judge directing the authority concerned to decide the representation of the respondent/petitioner dated 15.10.2006. The representation of the respondent/petitioner was rejected vide order dated 31.01.2006 on the ground that the post of Livestock Extension Officer was not a notified post to be reserved for the physically handicapped persons. It was further stated in the rejection order that the respondent/petitioner could not get minimum 25% marks in the written examination conducted for selection/admission.

3. The writ petition in question has been filed by the petitioner after rejection of his representation. As stated in the earlier paragraphs that no reservation for physically handicapped person was provided in the advertisement for the reason that the post of Livestock Extension Officer was not notified post to be reserved for the physically handicapped persons.

4. Section 33 of Act No.1 of 1996 communicated by the Parliament provides for reservation to handicapped persons. Section 33 whereof is reproduced as under: -

> ***"33. Reservation of post –*** *Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from-*
>
> *(i) blindness or low vision;*
>
> *(ii) hearing impairment*
>
> *(iii) locomotor disability of cerebral palsy, in the posts identified for such disability;*
>
> *Provided that the appropriate Government may, having regard to the type of work carried on in any department of establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."*
>
> *The term "appropriate Government" and "establishment" has been defined in the Act No. 1 of 1996, in the following manner:*
>
> **"Section 2 (a) <u>appropriate Government –</u>** means
>
> *(i) in relation to the Central Government, or any establishment wholly or substantially financed by that Government or a Cantonment Board constituted under the Cantonment Act, 1927 (2 of 1924), the Central Government.*
>
> *(ii)* ***<u>In relation to a State Government, or any establishment wholly or substantially financed by that Government</u>*** *or any local authority, other than a Cantonment Board, the State Government.*
>
> *(iii) In respect of the Central Co-ordination Committee and the State Executive Committee, the Central Government.*

(iv) In respect of the State Co-ordination Committee and the State Executive Committee, the State Government.

Section 2 (k) <u>'Establishment' –</u> *means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 (1of 1956) and includes Department of a Government."*

5. The State Government in exercise of its powers under Section 3(1)(two) of the State Act of 1992 (as amended vide Act No.6 of 1997) issued a notification dated 11.10.2004 in consonance of the provisions of Section 33 of the U.P. Act which is applicable in State of Uttaranchal by virtue of Section 86 of U.P. Reorganization Act, 2000. The notification is on record and column 8 of the said notification provides that the posts which have been reserved for the handicapped persons have been notified and those posts are (1) Lab Assistant (2) Investigator-cum-Cashier/ Statistical Assistant, (3) Junior Clerk (4) Fodder Assistant and (5) Class – IV posts. The post of Live Stock Extension Officer does not find place in the said notification , therefore, no reservation can be provided to the post of Live Stock Extension Officer. Thus, the advertisement issued was perfectly in accordance with rules as the reservation policy for the handicapped persons did not provide for the reservation to the handicapped persons on the post of Live Stock Extension Officer.

6. Thus, the entire challenge of the writ petition based on the reservation is not sustainable in the eye of law and the judgment of learned Single Judge dated 31.03.2006 is liable to be set aside is accordingly set aside. The special appeal is allowed accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma,J.)**

19.05.2006
R. Dang